

## CIVIL SERVICE COMMISSION MINUTES

November 20, 2002

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin  
Barry I. Newman  
Sigrid Pate  
Mary Gwen Brummitt  
Marc Sandstrom

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES  
November 20, 2002

1:15 p.m.      CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 358, 1600 Pacific Highway,  
San Diego, California 92101

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
5,6,7,8,9,10,11	8,11		

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Sandstrom. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

A. Commissioner Brummitt: Veronica Aguilar, Esq., on behalf of **Esteban Zemacki**, former Drafting Technician III, appealing an Order of Removal and Charges from the Department of Public Works.

B. Commissioner Austin: **Antonio Lee Smith**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

C. Commissioner Austin: Donovan Jacobs, Esq., on behalf of **Terry Phillips**, Deputy Sheriff, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

D. Commissioner Austin: Everett Bobbitt, Esq., on behalf of **Reginald Griddine**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

E. Commissioner Pate: Monica Guizar, Esq., on behalf of **Joseph Diaz**, former Protective Services Worker II, appealing an Order of Removal and Charges from the Health and Human Services Agency.

F. Public Employee Performance Evaluation: Executive Officer.

**REGULAR AGENDA**  
**County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

**MINUTES**

1. Approval of the Minutes of the regular meeting of October 16, 2002.

**Approved.**

## CONFIRMATION OF ASSIGNMENTS

2. Commissioner Brummitt: **Gerald Hall**, former Public Defender Investigator III, appealing a Final Order of Removal and Charges from the Department of the Public Defender.

**Confirmed.**

3. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Gloria Paranada**, former Deputy Probation Officer, appealing an Order of Removal and Charges from the Department of Probation.

**Confirmed.**

4. Commissioner Sandstrom: **Joseph Jones**, former Residential Care Worker II, appealing an Order of Removal and Charges from the Health and Human Services Agency.

**Confirmed.**

## DISCIPLINES

### Findings

5. Commissioner Brummitt: Veronica Aguilar, Esq., on behalf of **Esteban Zemacki**, former Drafting Technician III, appealing an Order of Removal and Charges from the Department of Public Works.

### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause 1 - Conduct unbecoming an officer or employee of the County of San Diego (attempting to obtain copies of crime scene photos for the purpose of selling them for profit); Cause 2 - Insubordination (suggesting a money-making scheme); Cause 3 - Acts incompatible with or inimical to the public service; Cause 4 - Acts incompatible with or inimical to the public service; and Cause 5 - Damage or waste of public property. Employee was a Drafting Technician III in the Department of Public Works at the time of his removal, and had been employed with the County for approximately 13 years. The Department alleged that he planned and attempted to execute a scheme to misappropriate, for profit, highly sensitive evidence in the form of crime scene photos from the County's Photo Lab, relating to a high profile murder trial. The Department relied principally on the testimony and written statements of a County employee who worked in the lab. The Department also presented testimony and evidence that during the investigation of Employee, they examined his computer memory and found many records and information that were unrelated to County business. They also determined that Employee had reconfigured his computer to automatically delete many files within one day of their creation, contrary to County policy and procedures. Employee pled his Fifth Amendment rights not to provide testimony which could incriminate him.

The Department's charges were clearly proven. Employee's conduct involved a high level of guilt awareness. He intended to conspire to buy confidential County property and to sell it. His conduct involved a substantial level of planning and premeditation. Moreover, if the photos had been leaked to the media, they could have resulted in a high level of damage. In light of the foregoing, the hearing officer requested that the DA's office investigate every avenue for criminal prosecution as Employee has clearly evidenced his willingness to engage in criminal conduct. By a preponderance of evidence, the Department

proved all of the charges in its Order of Removal and Charges. Employee is guilty of Cause 1, Cause 2, Cause 3, Cause 4, and Cause 5. It is therefore recommended that the Order of Removal and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations; seconded by Newman. Carried.**

6. Commissioner Austin: **Antonio Lee Smith**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Unbecoming conduct of an officer of the County of San Diego (sexual assault while responding to a call of battery; Cause II - Immorality (engaging in five separate acts of oral sex and one act of sexual intercourse with the suspect of a crime while at her residence); Cause III - failure of good behavior; Cause IV - negligence resulting in harm or significant risk of harm to the public or public service; Cause V - incompetency; Cause VI - acts which are incompatible with and/or inimical to the public service. Employee was a Reserve Officer for 5 years prior to his termination. At the commencement of the hearing, Employee admitted to all charges in the Order of Termination, except for the Charges under Cause III and Cause VI (as it relates to Cause III). The Hearing Officer consulted with counsel and returned to the hearing with a statement that he was inclined to recommend that the termination be affirmed with or without the charges under Cause III. Counsel for the Sheriff's Department informed the Hearing Officer that he and Employee entered into a verbal stipulation that Employee acknowledged admission of charges as referenced above, and that counsel for the Sheriff's Department would not attempt to prove the charges under Cause III.

All charges were proven except for those contained under Cause III and Cause VI (as it relates to Cause III). Employee is guilty of Cause I, Cause II, Cause IV, Cause V and Cause VI. Employee is not guilty of Cause III. It is therefore recommended that the Order of Termination and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Austin to approve Findings and Recommendations; seconded by Pate. Carried.**

7. Commissioner Austin: Donovan Jacobs, Esq., on behalf of **Terry Phillips**, Deputy Sheriff, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Failure of good behavior (firing of beanbag shotgun when a less lethal shotgun would have been warranted); Cause II - Acts incompatible with and/or inimical to the public service. Employee has been a Deputy Sheriff for approximately 9½ years. At the time of the incident, he was a patrol deputy assigned to the San Marcos station with no prior record of discipline. The evidence revealed the following: In June 2001 the Department received repeated disturbance complaints regarding one certain house. Additionally, one of the occupants had a prior conviction for robbery and was a suspect in other criminal investigations. The occupants had become increasingly

uncooperative over time, including running into the house and refusing to open the door, telling deputies that a warrant was needed. The home became a COPPS project, discussed at shift briefings. A sergeant made the decision that upon the next opportunity, his deputies would pursue the occupants into the home and make arrests.

On June 23, 2001 the deputies "staged" near the offending residence, armed with recently issued Less Lethal Munitions, consisting of pepper ball launchers and a shotgun carrying beanbag rounds. Deputies are trained to aim for areas of the body away from vital organs, although these weapons have been known to cause death in rare circumstances. As the deputies neared the house, several of the occupants attempted to run inside and the deputies entered the home before the suspects could lock them out. There was substantial conflicting testimony regarding whether a subsequent person fired upon by a deputy was the same individual who was shot with a beanbag round by Employee. The Internal Affairs investigation was not limited to Employee, but to the conduct of several deputies. The investigation concluded that all deputies but Employee used reasonable force in firing their Less Lethal Munitions. Although Employee argued that the person who he shot with a beanbag was fleeing, the Department found that his claims were not credible because they conflicted with the report that he filed on the day of the incident.

The Department had the burden of proving, by a preponderance of evidence, that Employee's use of force was unreasonable and unnecessary. There were several inconsistencies in the testimony and evidence presented at the hearing. Nevertheless, the preponderance of evidence established that both Employee and the other deputy fired their munitions at the same individual exiting the house. The Department found that the other deputy used reasonable and necessary force and that Employee's use of force was nearly identical to that of the other deputy. At the hearing, there were inconsistencies regarding the physical descriptions of the occupants of the home (probably due to the speed and intensity with which the operation unfolded and the number of variables involved at that time). The Hearing Officer did not second-guess the Department's findings that the other deputies used reasonable and necessary force and concluded that Employee should be included under that determination. Employee is not guilty of Causes I and II. It is therefore recommended that the Order of Pay Step Reduction and Charges be reversed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Austin to approve Findings and Recommendations; seconded by Pate. Carried.**

8. Commissioner Austin: Everett Bobbitt, Esq., on behalf of **Reginald Griddine**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

#### FINDINGS AND RECOMMENDATIONS:

The Hearing Officer presented his Findings, Conclusions and Recommendations. However, before rendering his conclusions at the meeting, Commissioner Austin explained that prior to commencement of the hearing, a stipulation was entered into between the Department and Employee, and that he wished to clarify language contained in that stipulation before rendering these findings and conclusions. Therefore, he requested that the Commission continue this matter until a post-stipulation meeting could be conducted with the parties, and requested that Staff schedule this post-hearing meeting immediately.

**Continued.**

9. Commissioner Pate: Monica Guizar, Esq., on behalf of **Joseph Diaz**, former Protective Services Worker II, appealing an Order of Removal and Charges from the Health and Human Services Agency.

**FINDINGS AND RECOMMENDATIONS:**

Employee is charged with Cause I - Negligent exposure of others to significant risk of harm (leaving children and families at significant risk); Cause II - Dishonesty (falsification of official records); Cause III - Insubordination; Cause IV - Acts incompatible with or inimical to public service; Cause V - Conduct unbecoming an officer or employee of the County; VI - Willful misconduct causing waste of County property; Cause VII - Inefficiency; and Cause VIII - Incompetency. Employee was a Protective Services Worker II at the time of his termination. His employment duties involved investigating complaints of child abuse. The Agency alleged that Employee had a history of deficient performance and submitted two performance evaluation reports reflecting the same. The Removal at issue resulted from a quality control review of Employee's cases, which was initiated after the Agency received complaints about Employee's conduct concerning his unauthorized contact and involvement with a client of a woman's shelter. The investigation findings are embodied in the causes contained in the Order of Removal.

Although not all the Agency's charges were proven, the majority were proven and revealed a pattern of poor judgment, hap hazard investigations and misleading case documentation, as well as prior discipline. Employee's testimony at the hearing appeared, at times, to be evasive, inconsistent and ingratiating. The Hearing Officer found that while the progression of discipline was severe in comparison to the number of years Employee was employed with the Agency, of more importance was the vulnerability of children he was obligated to protect.

Employee is guilty of Cause I, Cause II, Cause III, Cause IV, Cause V, Cause VII and Cause VIII. Employee is not guilty of Cause VI. It is therefore recommended that the Order of Removal and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried.**

**DISCRIMINATION**

**Findings**

10. Commissioner Brummitt: **Constance Locy**, former Sheriff's Records & ID Clerk I, alleging disability and reverse racial discrimination by the Sheriff's Department.

**FINDINGS AND RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission on October 3,

2001, the Commission appointed Mary Gwen Brummitt to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. Ms. Locy also filed complaints with EEOC alleging the same or similar allegations as those filed with the Commission. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of disability and reverse racial discrimination and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with the appended Final Investigative Report with findings of no probable cause that Complainant has been discriminated against on any basis protected by law.

**Motion by Brummitt to approve Findings and Recommendations; seconded by Pate. Carried.**

## **INVESTIGATIONS**

### **Findings**

11. Commissioners Pate and Sandstrom: Everett Bobbitt, Esq., on behalf of the **Deputy Sheriffs' Association** regarding their request that the Civil Service Commission hear appeals of peace officers receiving reprimands.

#### **FINDINGS AND RECOMMENDATIONS:**

Commissioners Sandstrom and Pate were appointed at the September 18, 2002 Civil Service Commission Meeting to conduct an investigation (under Rule XI) regarding this matter. A meeting was held on November 6, 2002. Participants were: Commissioners Sandstrom and Pate, Ralph Shadwell, Senior Deputy County Counsel, as legal advisor to the Commission; Larry Cook, Executive Officer; William Songer, Senior Deputy County Counsel, representing the County; Robert Faigin, Esq., representing the Department; and Everett Bobbitt, Esq. and Richard Pinckard, Esq., representing the DSA.

Commissioner Sandstrom read the Findings, recommending that Rule VII be amended to allow the Civil Service Commission to hear reprimands for Peace Officers only. Such amendment would preserve most of the language of Rule VII, and would not affect non-peace officer employees. It is therefore recommended that the Civil Service Commission initiate an amendment to Rule VII as addressed in the Findings and Conclusions; that the Commission invite Mike Kolb, Manager of Labor Relations, into Closed Session on November 20, 2002 to receive direction regarding a potential Rule VII amendment as drafted by County Counsel; that the Commission read and file this report; and that the proposed recommendations shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Sandstrom to approve the Investigation Report; seconded by Pate. Discussion ensued; motion was retracted.**

There was open discussion among the five Commissioners, as well as input from Carlos Arauz, Director of Human Resources, County Counsel, and the Sheriff's Department. Commissioner Austin voiced that he disagreed with the recommendation to amend Rule VII, and raised objection to any rule change that was not initiated or required by court order. Several other Commissioners expressed various concerns, as well. Due to the number of queries and discussion topics relating to this matter, a

motion was made to table this item until further investigation could take place.

**Motion by Pate to continue this item to a future Agenda. Seconded by Newman. Carried.**

## **SELECTION PROCESS**

### **Findings**

12. **Jeremy B. Collis**, appeal of removal of his name by the Department of Human Resources from the employment list for Deputy Sheriff Cadet.

RECOMMENDATION: Ratify Item No. 12. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Item No. 12 Ratified.**

## **OTHER MATTERS**

### **Extension of Temporary Appointments**

13. Health and Human Services Agency

A. 1 Medical Records Technician (Michael Alaysa)

B. 1 Eligibility Technician (Mohammad Zarif)

RECOMMENDATION: Ratify Item No. 13.

**Item No. 13 Ratified.**

14. Public Input.

ADJOURN TO CLOSED SESSION: To discuss performance evaluation of Executive Officer of the Civil Service Commission.

ADJOURNMENT: 4:00 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE DECEMBER 18, 2002.**